

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

IRON MOUNTAIN RECORDS
MANAGEMENT, INC.

Employer¹

and

Cases 32-RD-1349
32-RD-1351

PAUL RAMIREZ

Petitioner

and

TEAMSTERS UNIOIN LOCAL 287,
INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO

Union²

IRON MOUNTAIN RECORDS
MANAGEMENT, INC.

Employer

and

Case 32-UC-369

TEAMSTERS UNION LOCAL 78,
INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO

Petitioner³

DECISION AND ORDER

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

¹ The name of the Employer appears as stated at the hearing.

² The name of the Union (which is also the Petitioner in Case 32-UC-369) appears as amended at the hearing.

³ Herein called the Union.

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer, a Massachusetts corporation, is engaged in the storage of business and other records, including at a number of facilities located in San Jose and Sunnyvale, California. During the past twelve months the Employer provided services valued in excess of \$50,000 to customers located outside the State of California. In such circumstances, I find that the Employer is engaged in commerce within the meaning of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The record establishes, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

4. As noted above, the Employer is engaged in the storage of business and other records. The Employer's operations are conducted out of buildings called record centers. The Employer employs couriers, who pick up and deliver customer records to and from the record centers; record center leads, who are responsible for assigning work at the record centers, for making sure that the work is done efficiently, and for handling customer inquiries; and record centers specialists, who are responsible for indexing customer records and retrieving and preparing customer records for delivery.

Prior to April 1, 1999⁴ the Employer operated two record centers in San Jose and one record center in Sunnyvale, California. At that time the record center leads and specialists and couriers at these three facilities were represented by the Union under the terms of a multi-location collective bargaining agreement which expired on March 31.⁵ The Employer's bargaining unit at that time consisted of 15 employees.

On April 1 the Employer acquired the operations and employees of First American Records Management (herein called FARM), one of its competitors. At that time FARM had two or three regular facilities and an overflow facility in San Jose and employed about 15 employees. The record discloses that the work performed by the FARM employees at its facilities was similar if not identical to that performed by the Employer's own record center leads, record center specialists and couriers.

Bargaining for a successor collective bargaining agreement between the Union and the Employer started at around the same time that the Employer acquired FARM's operations. According to the Employer, it needed some time to assess the personnel implications of the FARM acquisition and rather than "stall" the negotiations with the Union over its own employees it made a decision to "hold off" the FARM employees and to complete the contract negotiations with the Union without them. Consistent therewith, the Employer maintained the former FARM operations as a separate business unit, maintained its own lines of supervision, and did not interchange either employees or

⁴ All dates hereafter refer to 1999, unless otherwise indicated.

⁵ This agreement covered all bargaining unit work performed by the Employer in Santa Clara and San Benito Counties, even though the Employer had (and has) no operations in the latter county.

equipment between its own operations and its former FARM operations. Also consistent therewith, the Employer did not apply any of the terms of its recently-expired Union contract to its former FARM employees.

On September 16 the Employer and the Union executed a successor contract covering the Employer's record center leads, record center specialists and couriers employed in Santa Clara and San Benito Counties. There is no evidence that either the Union or the Employer acted or believed that this successor contract covered the Employer's former FARM employees. There is also no evidence that at any time during the negotiations for that new agreement the parties ever discussed the inclusion of the former FARM employees in the bargaining unit or specifically agreed to reserve that issue for later Board clarification. To date the Employer has not applied the terms of the new Union contract to its former FARM employees.

Since the execution of the parties' September 16 agreement the Employer has maintained the separate operational identity of the former FARM employees; as in the past, the former FARM operations have their own separate lines of supervision and there has been no interchange of employees or equipment between the Employer's own operations and the former FARM operations. In early December the Employer's human resources manager informed the former FARM employees that the Employer intended to "integrate" them into its own operations effective January 1, 2000. According to the Employer, however, it held off implementing its integration plans because of the filing of the RD petitions in this matter. To date there is no evidence that there has been any interchange of supervision, employees or equipment between the Employer's contractual bargaining unit and the unit of former FARM employees.

The petition in Case 32-RD-1349 seeks an election a unit of all "record center employees and records couriers/drivers" employed by the Employer in Santa Clara and San Benito Counties. The petition in Case 32-RD-1351 seeks an election in a unit of similarly-classified employees employed by the Employer at 559 Charcot St., San Jose, a location which is one of the former FARM facilities acquired by the Employer on April 1. Both of these petitions were amended at the hearing to clarify the requested classifications as record center leads, specialists and couriers; however, the scope of their respective units remained as originally described. The petition in Case 32-UC-369 seeks to clarify the bargaining unit in the current contract between the Union and the Employer to specifically include the former FARM employees who perform what would otherwise be unit work. For the reasons set forth below, I find that further processing of these three petitions is inappropriate and they will all be dismissed.

Initially, I find the petitions in both Cases 32-RD-1349 and 32-RD-1351 should be dismissed because there is no evidence that the Employer has recognized the Union in either of the requested units. Thus, there is no evidence that the Union has been recognized by the Employer in an Employer-wide Santa Clara County/San Benito County unit that includes the former FARM employees. Nor is there any evidence that the Union has been recognized by the Employer as the representative of its employee at the Charcot Road facility on a single-facility basis. Accordingly, since there is no question

concerning representation in the units involved in Cases 32-RD-1349 and 32-RD-1351, the petitions therein will be dismissed.

I also find that dismissal of the petition filed in Case 32-UC-369 is warranted. The Board has traditionally held that a unit clarification petition submitted during the term of a contract specifically dealing with the disputed classification will be dismissed if the party filing the petition did not reserve its right to file during the course of bargaining. *Wallace-Murray Corp.*, 192 NLRB 1090 (1971). As the Board has explained, its unit clarification procedure is not to be used by a party to effect a change in the composition of the bargaining unit during the contract term after it has agreed to the unit's definition. See *Northwest Publications Inc., d/b/a San Jose Mercury & San Jose News*, 200 NLRB 105, 106 (1972), *Monongahela Power Co.*, 198 NLRB 1183 (1972), and *Edison Sault Electric Company*, 313 NLRB 753 (1994). While this case differs from the cited cases in that, *inter alia*, it involves a requested change in the scope of the unit and not its composition and also because both the Employer and the Union appear amenable to the requested clarification, those circumstances are still an insufficient basis to grant the requested clarification. As noted above, the parties were fully aware of the Employer's acquisition of the former FARM operations when they were negotiating their successor contract yet they consciously entered into a new contract that did not specifically include those former FARM employees. Moreover, even though the Union's petition seeks clarification of the contractual bargaining unit on the implicit basis that the former FARM employees are an accretion to the existing unit, there is little evidence in the record establishing that the former FARM employees have been so "accreted" into the existing unit. Rather, what evidence there is in the record on this point establishes exactly the contrary, namely, that to date the Employer has not done anything to "integrate" or otherwise accrete those former FARM employees into the existing contractual unit. The requested clarification therefore appears clearly inappropriate for this reason as well.

Accordingly, and for the reasons set forth above, I find that further processing of the petitions filed in cases 32-RD-1349, 32-RD-1351 and 32-UC-369 is inappropriate.

ORDER

IT IS HEREBY ORDERED THAT the petitions in Cases 32-RD-1349, 32-RD-1351 and 32-UC-369 be, and they hereby are, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by February 15, 2000.

Dated at Oakland, California this 1st day of February, 2000.

James S. Scott, Regional Director
National Labor Relations Board
Region 32
1301 Clay Street, Suite 300N
Oakland, CA 94612-5211

32-1190

316-3301-5000
316-673-0100
355-3350
385-7533-2020